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## Chapter 21.48 – Standards for Specific Land Uses

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### 21.48.010 – Purpose

This chapter provides additional site planning, development, and operational standards for a variety of specified land uses.

### 21.48.025 – Visitor Accommodations

- A. **Applicability.** The provisions of this section shall apply to applications involving the development of new visitor accommodations or the demolition, conversion, closure, or cessation of existing visitor accommodations.
- B. **Considerations.** The review authority shall:
1. The development's ability to protect, encourage, or provide low-cost visitor-serving and recreational facilities on the project site or in the immediately adjacent area; and
  2. The development's impact to, and ability to provide, public recreational opportunities;
  3. The feasibility to rehabilitate existing low cost accommodations to meet a minimum acceptable level of comfort and hospitality while maintaining the ability to provide low cost visitor accommodations; and
  4. The range of room types and room rates Citywide.
- C. **Protection of Existing Low Cost Visitor Accommodations.**
1. **Low, Moderate, and High Cost Visitor Accommodations Defined.** For purposes of this subsection, visitor accommodations shall be defined as low, moderate, or high cost as follows:

Low Cost – The average daily room rate of all hotels and motels in the City that have room rates that are below the statewide average daily room rate or lower.

Moderate Cost – The average daily room rate is between low cost and high cost.

High Cost – The average daily room rate is 120 percent of the statewide average daily room rate or greater.

2. **Impact Analysis Required.** An analysis a development's impact on low cost visitor accommodations shall be required for any application involving the demolition, conversion, closure, or cessation of existing low cost visitor accommodations, with the exception of short-term lodging.

The impact analysis shall be prepared at the applicant's expense.

3. **Impact Defined.** The proposed development would directly result in the demolition, conversion, closure, or cessation of existing low cost visitor accommodations, with the exception of short-term lodging.
4. **Mitigation.** If the review authority determines that the development will impact low cost visitor-serving accommodations, replacement of low cost rooms lost shall be provided at a one-to-one ratio either on-site or a suitable off-site location within the City, or payment of an in-lieu fee commensurate with the impact shall be required. The review authority may authorize deviations from development standards that provide economic incentives to the development to maintain affordability.
5. **Rate Control and Income Eligibility Requirements Prohibited.** In no event shall a development as mitigation be required:
  - a. To provide overnight room rental be fixed at an amount certain; or
  - b. To establish any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.
6. **Protection of Short-term Lodging.** Most short-term lodging units meet the low cost definition when maximum occupancy is taken into account. Short-term lodgings can accommodate more people than a typical hotel room. They also provide full-sized, equipped kitchens allowing families or larger groups to reduce the overall cost of a visit by allowing them to prepare meals as an alternative to dining out. The City shall continue permit short-term lodgings as a means of providing lower-cost overnight visitor accommodations while continuing to prevent conditions leading to increase demand for City services and adverse impacts in residential areas and coastal resources.

- D. **Conversion to LUOVA Prohibited.** The conversion of any hotel or motel unit for which a certificate of occupancy has been issued on or before July 14, 2009, to a limited-use overnight visitor accommodations (LUOVA) shall be prohibited, except as provided in subsection (1) of this subsection.

1. **Exceptions to Conversion Prohibitions.** A LUOVA project shall be permitted on the hotel resort property located at 1107 Jamboree Road, such to the following requirements:
  - a. LUOVA units shall be provided together with traditional overnight, hotel visitor accommodations;
  - b. A minimum of three hundred and ninety-one (391) traditional hotel units shall remain available for transient overnight use by the general public year round and no more than eighty-eight (88) of the total four hundred and seventy-nine (479) units planned may be LUOVA units; and
  - c. Owner use of LUOVA units shall not exceed a maximum of ninety (90) days per calendar year with a maximum of twenty-nine (29) days of use during any sixty (60) day period; and
  - d. LUOVA units shall be maintained by the management of the hotel facility and shall remain available for transient overnight use by the general public when not occupied by the owner.
- E. **Tsunami Information and Evacuation Plans.** Visitor-serving accommodations in areas identified as susceptible to tsunami inundation shall be required to provide guests with information on tsunami information and evacuation plans.

#### **21.48.035 – Newport Harbor**

- A. **Priority of Uses.** Priority shall be given to coastal-dependent uses over other uses on or near the shoreline. When appropriate, coastal-related developments shall be accommodated within reasonable proximity to the coastal-dependent uses they support.
- B. **Development Standards.** Where applicable, development in Newport Harbor shall:
  1. Protect, and where feasible, expand and enhance vessel-launching facilities in Newport Harbor;
  2. Protect, and where feasible, expand and enhance low-cost public launching facilities, such as trailer launch ramps, boat hoists, commercial landing facilities, and organized recreational boating launch facilities;
  3. Provide a variety of berthing opportunities reflecting State and regional demand for slip size and affordability throughout Newport Harbor;
  4. Protect, and where feasible, enhance and expand marinas and dry boat storage facilities;
  5. Protect shore moorings and offshore moorings as an important source of low-cost public access to the water and harbor;

6. Protect, and where feasible, enhance and expand dinghy docks, guest docks at public facilities, yacht clubs and at privately owned marinas, restaurants and other appropriate locations;
7. Protect, and where feasible, expand and enhance facilities and services for visiting vessels, including public mooring and docking facilities, dinghy docks, guest docks, club guest docks, pump-out stations and other features through City, County, and private means;
8. Protect, and where feasible, expand and enhance facilities necessary to support vessels berthed or moored in the harbor, such as boat haul-out facilities;
9. Protect, and where feasible, expand and enhance existing harbor support uses serving the needs of existing waterfront uses, recreational boaters, the boating community and visiting vessels;
10. Support private sector uses, such as vessel assistance, that provide emergency, environmental enhancement and other services that are not provided by the public sector and that are essential to the operation of a harbor;
11. Provide, expand and enhance, where feasible, existing recurring and year-round harbor special permits and special purpose uses such as boat shows and boating festivals, boat sales displays and delivery/commissioning facilities.

#### **21.48.045 – Industrial Uses**

This section provides standards for industrial uses.

- A. Priority shall be given to coastal-dependent and coastal-related industrial uses over other industrial uses in I districts on or near the shoreline. Coastal-dependent industrial facilities shall be encouraged to locate or expand within existing sites and allowed reasonable long-term growth.
- B. New hazardous industrial development shall be located away from existing developed areas, where feasible.

#### **21.48.055 – Public Beaches**

- A. **General.** Public beaches shall be protected as a means of providing free and lower-cost recreational opportunities.
- B. **Uses.** Land uses and development on public beaches shall be limited to public safety facilities, restroom facilities, showers, bikeways, walkways, public recreation facilities, and similar public facilities.
- C. **Parking.** Public parking shall be permitted provided there are no significant adverse impacts to public beaches or the public's right of access to the bay and ocean.
- D. **Dory Fleet.** The historic Dory Fishing Fleet shall be permitted to be launched and stored and to sell fish on the public beach adjacent to Newport Pier.

- E. Use of Beaches at Night.** Since 1947, the City of Newport has regulated the use of the public beaches at night for the preservation of public health, peace, and safety. Use of any public bay, beach, or ocean front shall be consistent with the Newport Beach Municipal Code.

#### **21.48.085 – Public Trust Lands**

- A. Applicability.** Public Trust Lands include tidelands, submerged lands, the beds of navigable lakes and rivers, and historic tidelands and submerged lands that are presently filled or reclaimed and which were subject to the Public Trust at any time.
- B. Limits on Uses.** Public Trust Lands are subject to the Common Law Public Trust, which limits uses to navigation, fishing, commerce, public access, water-oriented recreation, open space and environmental protection.
- C. Exceptions.** State legislation has modified public trust restrictions for the historic tidelands in Beacon Bay, the Balboa Bay Club, and Harbor Island.
1. **Beacon Bay.** The Beacon Bay Bill (Chapter 74, Statutes of 1978) and Senate Bill 573 (Chapter 317, Statutes of 1997) allow the residential lots of Beacon Bay located within State tidelands to be leased for residential purposes until June 27, 2043.
  2. **Balboa Bay Resort.** The Beacon Bay Bill (Chapter 74 of the Statutes of 1978) and Assembly Bill 3139 (Chapter 728, Statutes of 1994) allow Parcel D of the Balboa Bay Resort to be leased for residential purposes until December 31, 2044.
  3. **Harbor Island.** Chapter 715, Statutes of 1984 allow the filled or reclaimed land on Harbor Island to be leased for non-permanent recreational and landscaping purposes.
- D. Leases.** The following restrictions shall apply to leases of public trust lands:
1. **Use of Leases.** In the event public trust lands are used for commercial purposes by an entity other than the City, the City shall use leases to implement the provisions of this Article. The City shall transition any public trust lands currently on annual permits to leases unless the City makes findings that a permit is more appropriate than a lease.
  2. **Land Use.** Land uses shall be consistent with the public trust land use restrictions. Priority shall be given to the provision of coastal-dependent uses.
  3. **Public Access.** Public access shall be provided in a manner consistent with Chapter 21.30A (Public Access and Recreation).
  4. **Revenue.** Rental rates in the leases under this section shall be based upon the fair market value, as determined by an authorized appraiser, survey, or other appropriate valuation method, of the uses authorized in the lease or permit and as established by City Council.

## 21.48.095 – Special Events

- A. **Purpose.** To provide regulations allowing for special events while mitigating impacts on residents, visitors and businesses, maintaining traffic circulation, and ensuring public safety.
- B. **Applicability.** This section shall apply activities of a duration that does not exceed a two (2) week period on a continual basis, or does not exceed a consecutive four (4) month period on an intermittent basis.
- C. **Coastal Development Permit Required.** A coastal development permit shall be required for any special event meeting the following criteria:
  - 1. Involves an activity or use that constitutes development as defined in Section 30106 of the Coastal Act; and
  - 2. Involves exclusive use of a sandy beach, parkland, filled tidelands, water, streets or parking area which is otherwise open and available to the general public for public recreation, beach access or access to coastal waters; and
  - 3. Occurs on and between Memorial Day weekend and Labor Day and will be more than one day in duration, including set-up and take-down; or
  - 4. Occupies any portion of a public sandy beach, unless the location is remote with minimal demand for public use; or
  - 5. There is the potential for adverse effect of sensitive coastal resources; or
  - 6. A fee will be charged for general public admission and/or seating where no fee is currently charged for use or event of the same area (not including booth or entry fees); unless, if a fee is charged, it is for preferred seating only and more than seventy-five (75) percent of the provided seating capacity is available free of charge for general public use; or
  - 7. Involves permanent structures or structures that involve grading or landform alteration for installation.
- D. **Imposition of Conditions.** Conditions may be imposed when necessary to minimize impacts to public access, recreation and coastal resources.

## 21.48.105 – Limited Duration Uses and Structures

- A. **Purpose.** The purpose of this section is to consider applicant requests for uses of limited duration (e.g., interim, nonpermanent, and/or seasonal in nature) that would be compatible with adjacent and surrounding uses when conducted in compliance with this section.
- B. **Applicability.** This section allows limited duration uses that might not meet the development or use standards of the applicable coastal zoning district, but may otherwise be acceptable because of their temporary or limited nature.

- C. **Coastal Development Permits.** A coastal development permit shall not be required for a limited duration use or structure conducted in compliance with this section.
- D. **Exempt Limited Duration Uses.** The following limited duration uses are exempt from the provisions of this section. Uses that do not fall within the categories defined below shall comply with subsection (E) of this section (Allowed Limited Duration Uses).
1. **Construction Yards—On Site.**
    - a. On-site contractors' construction yard(s), including temporary storage and office trailers, in conjunction with an approved construction project on the same lot.
    - b. One adult caretaker may be present during nonconstruction hours for security purposes.
    - c. The construction yard shall be removed immediately upon completion of the construction project, or the expiration of the building permit.
  2. **Emergency Facilities.** Emergency public health and safety needs/land use activities.
  3. **Personal Property (e.g., Garage and/or Yard) Sales on Private Property.** Personal property sales conducted on private property.
  4. **Special Events.** Special events pursuant to Section 21.48.095.
- E. **Allowed Limited Duration Uses.** The following limited duration uses are allowed, subject to the approval of the Zoning Administrator.
1. **Contractors' Construction Yards—Off Site.** Off-site contractors' construction yard(s), in conjunction with an approved construction project. The use may be allowed for up to twelve (12) months, or the expiration of the building permit.
  2. **Off-Site Parking for Marine Activities.** Off-site parking for marine activities uses for not more than twelve (12) months.
  3. **Seasonal Sales.** Seasonal sales including holiday boutiques, Halloween pumpkin sales and Christmas tree sale lots only by businesses holding a valid business license; provided, the activity may only be held from October 1st through October 31st of the same year for the Halloween pumpkin sales, and from the day after Thanksgiving through December 26th for Christmas tree sales.
  4. **Limited Duration Sales and/or Work Trailers.** A trailer or mobile home may be used for limited duration sales activities (e.g., model home sales, etc.) or as a limited duration work site for employees of a business.
    - a. A trailer or mobile home may be used:
      - i. During construction or remodeling of a permanent commercial, industrial, and mixed-use structure, when a valid building permit is in force; or

- ii. Upon demonstration by the applicant that the limited duration work site is a necessity, while a permanent work site is being obtained.
- b. A limited duration trailer(s) may be allowed for up to twelve (12) months and may be extended for a longer period in conjunction with a valid building permit.
- 5. **Limited Duration Structures.** A limited duration classroom, office, or similar portable structure, including a manufactured or mobile unit, may be approved for a maximum time period of twelve (12) months in the commercial, industrial, and mixed-use coastal zoning districts.
- 6. **Limited Duration Use of a Vacant Lot.** The limited duration use of a vacant lot with nonpermanent structural improvements, for a use typically allowed within the coastal zoning district, may be approved for a maximum time period of twelve (12) months in the commercial, industrial, and mixed-use coastal zoning districts.
- 7. **Other Similar Limited Duration Uses.** Similar limited duration uses that, in the opinion of the Director, are compatible with the subject coastal zoning district and surrounding uses.
- 8. **Telecommunications Facilities.** A temporary telecommunications facility may be approved consistent with Chapter 21.49 for up to twelve (12) months.
- F. **Review Authority.**
  - 1. Limited duration uses may be approved, conditionally approved, or denied by the Zoning Administrator, in compliance with this section.
  - 2. The Zoning Administrator may instead refer the application for a limited duration use to the Commission for consideration and final action when, in the Zoning Administrator's judgment, there may be public interest, controversy, or issues requiring a public forum due to the nature of the request.
- G. **Findings and Decision.** The Zoning Administrator (or the Commission on a referral or appeal) may approve or conditionally approve a limited duration use, only after first finding all of the following:
  - 1. The limited duration use or structure will result in no adverse impact on opportunities for public use of or access to the area due to the proposed location and or timing of the use or structure;
  - 2. There will be no direct or indirect impacts from the limited duration use or structure and its associated activities or access requirements on environmentally sensitive habitat areas, rare or endangered species, significant scenic resources, or other coastal resources as defined in this Implementation Plan.
- H. **Conditions of Approval.** In approving a limited duration use, the review authority may impose conditions that are deemed necessary to ensure that the use would be in full compliance with the findings required by subsection (G) of this section (Findings and Decision).

- I. **Fixed Period of Time.** Unless otherwise stated, a provision for a fixed period of time not to exceed thirty (30) days for a limited duration use not occupying a structure, including promotional activities, or twelve (12) months for all other limited duration uses or structures, or for a shorter period of time as requested by the applicant and determined appropriate by the Zoning Administrator;
- J. **Extension.** The Zoning Administrator may extend the time limit for the limited duration use, upon request of the applicant and for good cause shown, up to a maximum time equal to the original approval, but not to exceed twelve (12) additional months, with a maximum of twenty-four (24) months total.